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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEB 7 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

International Settlement Rates

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IB Docket No. 96-261

**COMMENTS OF WORLDCOM, INC.**

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## **SUMMARY**

WorldCom supports the adoption of settlement rate benchmarks to (1) reduce high international settlement rates and (2) alleviate potential competitive distortions, particularly inbound settlement rate bypass. WorldCom applauds the Commission's hard work in crafting proposals that address the concerns of U.S. carriers while taking into account the understandable desire and need for certainty on the part of foreign carriers. By having developed such proposals, the Commission has enhanced the likelihood of successful conclusion of a WTO agreement in February 1997.

### **Benchmarks As A Means To Reduce High Settlement Rates**

While there is little doubt that long run incremental cost should be the preferred standard for establishing benchmark settlement rates, WorldCom is sympathetic to concerns that some countries might experience serious problems if the Commission were to implement at this time a requirement that settlement rates not exceed TSLRIC. As a result, while WorldCom believes that international settlement rates ultimately must reflect true economic cost, WorldCom supports the FCC's proposal to adopt benchmark rates, at least initially, based on foreign carriers' tariffed component prices. This approach represents a reasonable and equitable method of determining rates, and offers an important step in the right direction toward cost-based rates. Moreover, if a foreign carrier believes that a benchmark rate based on tariffed components does not appropriately reflect its economic cost of providing service, it is entitled to an administrative review by the FCC based on the carrier's presentation of its own data.

WorldCom believes it is crucial that the Commission adopt a black line transition schedule so that carriers have a much-needed pathway of certainty leading to cost-based

settlement rates. WorldCom supports as reasonable and sufficient a transition period of 18 months for high income countries, 2 years for upper middle income countries, 30 months for lower middle income countries, and 3 years for lower income countries. To foster greater certainty, WorldCom also favors adoption of a mandatory glide path that will require carriers to make reasonable progress in moving toward the benchmarks during the transition period. However, WorldCom believes it would be counterproductive to grant any kind of waivers or exceptions in implementing a transition schedule because they would interfere with certainty, and otherwise create undue delay and confusion in the world market.

The Commission must ensure timely and effective enforcement of its benchmark rules. In particular, the Commission must adopt a streamlined and certain pleading cycle and procedure to resolve allegations that foreign administrations have not complied with the benchmarks. Where a foreign carrier still has not reduced its settlement rates to the benchmark level by the applicable deadline, WorldCom supports the FCC's proposal that U.S. carriers be directed to pay a settlement rate no higher than the benchmark.

### **Benchmarks As A Means To Alleviate Inbound Bypass**

In addition to supporting the use of benchmarks to achieve lower, cost-based international settlement rates, WorldCom also supports the benchmarks approach as a major step toward alleviating potential competitive distortions -- in particular the incentive for carriers to engage in inbound settlement rate bypass. The potential adverse impact of such bypass would be heightened if the WTO agreement is signed. WorldCom reiterates its public support for the successful completion of a WTO agreement by the February 15 deadline. WorldCom believes,

however, that a successful WTO agreement must allow countries which have opened their telecommunications markets to competition, including the United States, to prevent the distortion of international traffic flows through inbound settlement rate bypass. Properly designed settlement rate benchmarks will alleviate the incentive to engage in one-way settlement rate bypass. Although the benchmark approach proposed by the Commission certainly is not a perfect economic solution because the proposed benchmarks are still well above economic cost, the benchmark approach is an important step in the right direction, and therefore, deserves support because it takes into account all carriers' understandable need for certainty.

- **Facilities-Based Services**

WorldCom supports the Commission's proposal to authorize carriers to provide international facilities-based switched or private line service from the United States to an "affiliated" market so long as the settlement rate offered by the affiliated carrier in that market is within the benchmark range. The FCC has crafted a narrowly-tailored remedy that addresses potential competitive distortions without restricting market entry. WorldCom also supports the FCC's proposal to order a reduction in the settlement rate to the low end of the benchmark in the event that the Commission determines that a carrier has caused competitive distortions. The Commission must establish a clear trigger mechanism that does not put the burden on U.S. carriers to prove that a competitive distortion has occurred.

- **International Simple Resale**

WorldCom strongly supports the imposition of settlement rate conditions on the

FCC's authorization of the provision of ISR on any given route. While WorldCom supports the FCC's proposal to allow ISR on a particular route when the settlement rate on that route is within the benchmark, WorldCom proposes a variation on this basic concept that would allow the provision of ISR on some routes even where the prevailing settlement rates are not within the benchmark. Under WorldCom's proposed three-prong test, ISR could be provided on a route if any one of the following is satisfied:

- (1) ISR is already authorized on the route as of the effective date of the order in this proceeding; or
- (2) The settlement rate for more than 50% of outbound traffic on a particular route is within the benchmark; or
- (3) The Commission determines that the foreign market offers equivalent opportunities for ISR.

In particular, the third option would allow ISR on a route even if the prevailing settlement rate is above the applicable benchmark. This would put added downward pressure on high accounting rates by encouraging competitors to terminate traffic at lower rates within the foreign market. Within WorldCom's proposal, the equivalency test would become an optional and inclusive mechanism for countries bound by the WTO telecommunications agreement, while remaining a mandatory and exclusive mechanism for all other countries.

WorldCom suggests a competitive distortion test based on the aggregate inbound/outbound ratio of settled traffic on a route. Once the Commission finds that there has been a competitive distortion, the Commission must direct that settlement rates be reduced to the lowest end of the benchmark.

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**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom") hereby files its comments in response to the Notice of Proposed Rulemaking, FCC 96-484 ("Notice"), released by the Commission on December 19, 1996 in the above-captioned proceeding.

In its Notice, the Commission proposes the adoption of settlement rate benchmarks to (1) reduce high international settlement rates and (2) alleviate potential competitive distortions, particularly inbound settlement rate bypass. WorldCom strongly supports the adoption of settlement rate benchmarks and, except as discussed in these comments, generally supports the specific proposals advanced in the Notice. WorldCom urges the Commission to expeditiously adopt and implement its benchmarks proposal, and looks forward to working with the Commission to further refine its proposals. By having developed such proposals, the Commission has enhanced the likelihood of successful conclusion of a WTO agreement in February 1997.

## **I. INTRODUCTION (BACKGROUND AND SUMMARY)**

### **A. WorldCom**

WorldCom is a leading provider of integrated long distance and local telecommunications services, offering domestic and international voice, data, Internet, and video products and services to business customers, other carriers, and the residential market.<sup>1</sup> WorldCom operates local network facilities, a nationwide digital fiber optic network in the United States, and worldwide network capacity. In addition, WorldCom has international facilities-based licenses in the United Kingdom, Germany, France, Sweden, and the Netherlands. As one of the largest U.S. providers of international services and as a provider of services in overseas markets, WorldCom is deeply interested in the Commission's proposals in this proceeding.

### **B. Settlement Rate Benchmarks**

In its Notice, the Commission proposes to utilize settlement rate benchmarks to tackle two difficult problems: (1) high settlement rates,<sup>2</sup> and (2) "competitive distortions," particularly one-way settlement rate bypass, that result from non-cost-based settlement rates.<sup>3</sup> First, the Commission proposes to establish enforceable settlement benchmarks to help bring high settlement rates closer to economic cost. Voluntary settlement rate benchmarks were first

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<sup>1</sup> On December 31, 1996, MFS Communications Company, Inc. merged with WorldCom. The combined company operates under the WorldCom name.

<sup>2</sup> Notice at paras. 6-10.

<sup>3</sup> Notice at paras. 11-13.



proposed by the Commission in 1991, and then adopted in November 1992,<sup>4</sup> in an attempt to move rates closer to cost. However, the Commission designed those benchmarks only as negotiating guidelines, not mandatory requirements.<sup>5</sup> As the Commission acknowledges in its Notice, the voluntary benchmarks soon became "obsolete" and were not successful in bringing high settlement rates closer to economic cost.<sup>6</sup> The Commission's Notice now proposes to take important further steps to create stronger, enforceable benchmarks.

Second, the Commission proposes to use benchmarks to alleviate the incentive for competitive distortion, particularly one-way settlement rate bypass. In addition to reducing above-cost settlement rates, the FCC's benchmarks proposal could serve as an important competition safeguard with respect to the WTO basic telecommunications negotiations in Geneva. WorldCom fully supports the successful conclusion of a WTO agreement, which would enter into force on January 1, 1998. WorldCom believes that competition will, in and of itself, bring down settlement rates and eventually make the accounting and settlements process unnecessary. However, in the interim period, WorldCom believes that countries must be able to use regulatory safeguards to protect their markets from competitive distortion due to inbound bypass of accounting rates.

Thus, WorldCom supports the FCC's adoption of its settlement rate benchmarks proposals, both as a means of bringing settlement rates closer to actual cost, and as a means of limiting (if not eliminating) significant competitive distortion of the U.S. market due to one-way

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<sup>4</sup> Regulation of International Accounting Rates, CC Docket No. 90-337, Second Report and Order and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040 (1992).

<sup>5</sup> Id. at para. 8.

<sup>6</sup> Notice at para. 27.

settlement rate bypass. WorldCom believes that the Commission can adopt, implement, and enforce settlement rate benchmarks that would be entirely consistent with the WTO's most favored nation ("MFN") principle, and that would still protect U.S. international carriers from substantial harm from one-way settlement rate bypass. The benchmarks proposal offers a new and welcome approach to alleviating the potential bypass problem, an approach marked by certainty, equity, and simplicity. WorldCom supports prompt adoption of the settlement rates benchmarks approach, and looks forward to assisting the Commission in the successful implementation and enforcement of benchmarks.

## **II. ADOPTION OF COST-BASED BENCHMARKS, TOGETHER WITH AN ENFORCEABLE BLACK LINE TRANSITION SCHEDULE, WILL HELP TO BRING HIGH SETTLEMENT RATES CLOSER TO COST**

In its Notice, the Commission proposes to adopt settlement rate benchmarks based on foreign carriers' tariffed component prices, with the upper end of the benchmark range based on the average of the tariffed component prices for a particular economic development category, and the lower end based on the estimate of the incremental cost of terminating traffic.<sup>7</sup> Using the simple average of the tariffed component prices in each category, the Commission suggests as the upper end of the benchmark range 15.4 cents for upper income countries, 19.1 cents for middle income countries, and 23.4 cents for lower income countries.<sup>8</sup> Any foreign carrier would be entitled to challenge the validity of the benchmarks applied to that carrier, but must

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<sup>7</sup> Notice at para. 39.

<sup>8</sup> Notice at para. 47. These three categories are derived from standard measures of economic development used by, among others, the World Bank. See Notice at para. 44.

demonstrate that its costs are higher than the established benchmark.<sup>9</sup>

Recognizing the need for an interim period to allow countries time to adjust to the benchmarks, the Commission proposes a transition schedule tied to the countries' level of economic development.<sup>10</sup> Should a country fail to meet the benchmark within the prescribed time period, the Commission proposes to direct U.S. carriers to take certain actions, including paying a settlement rate at or below the settlement rate benchmark.<sup>11</sup>

As explained further below, WorldCom believes that the key to the ultimate success of the Commission's proposed benchmarks approach is to adopt rules that are clear, certain, simple, and equitable. In WorldCom's view, the best approach is to adopt cost-based benchmarks, a firm, black line transition schedule, and strict enforcement mechanisms. This principled blend of certainty, simplicity, and equity is necessary to ensure the success of the benchmarks approach.

**A. TSLRIC-Based Settlement Rates Are The Ultimate Goal**

WorldCom agrees with the Commission that in a competitive market, prices would tend toward long run incremental cost, and therefore, long run incremental cost should be the preferred cost standard for establishing benchmark settlement rates.<sup>12</sup> Ideally then, rates for the termination of international calls should be based on the total service long-run incremental

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<sup>9</sup> Notice at para. 57.

<sup>10</sup> Notice at para. 62.

<sup>11</sup> Notice at para. 89.

<sup>12</sup> Notice at para. 32.

cost (TSLRIC), plus a reasonable contribution to joint and common costs.<sup>13</sup> Economists generally agree that a forward-looking, incremental costing standard is the best reflection of the actual cost of terminating telecommunications traffic.<sup>14</sup> Indeed, adoption of an approach based on TSLRIC is fully consistent with the FCC's position in its local interconnection proceeding,<sup>15</sup> as well as the Joint Board's universal service recommendation,<sup>16</sup> and one proposed approach in the Commission's reform of interstate access charges.<sup>17</sup>

WorldCom has consistently supported the Commission's position on utilizing forward-looking, incremental cost methodologies in all these proceedings.<sup>18</sup> In addition, WorldCom recently presented a request to the Commission of the European Union to use its powers to adopt expeditiously guidelines to unbundle local loops in the Member States of the

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<sup>13</sup> Notice at paras. 31-32.

<sup>14</sup> See e.g., Letter from Bruce Owen, Former Director, Economic Policy Office, Antitrust Division, Department of Justice, to Reed Hundt, Chairman, Federal Communications Commission, dated December 2, 1996 (Five former Chief Economists of the Antitrust Division support forward-looking costing of local interconnection rates).

<sup>15</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, at para. 679 (released August 8, 1996) ("Local Competition Order").

<sup>16</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 96J-3, Recommended Decision, at para. 270 (released November 8, 1996) ("Joint Board Universal Service Recommendation").

<sup>17</sup> In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC 96-488, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, at paras. 220-222 (released December 24, 1996) ("Access Charge Reform Notice").

<sup>18</sup> See e.g., Comments of LDDS WorldCom, CC Docket No. 96-98, filed May 16, 1996; Comments of WorldCom, CC Docket No. 96-45, filed December 19, 1996; Comments of WorldCom, Inc., CC Docket No. 96-262, filed January 29, 1997.

European Union.<sup>19</sup> In its paper, WorldCom urges the European Commission to determine prices for unbundled loops based on the forward-looking economic costs.<sup>20</sup>

At the same time, WorldCom understands that a requirement that settlement rates not exceed TSLRIC may cause some countries serious problems in the short term. WorldCom is sympathetic to these concerns. Numerous countries are in the process of moving from inefficient, high-priced monopoly telephone carriers to a more competitive, lower-priced market structure. As part of this process, many countries are in the midst of considering, or implementing, rate rebalancing. WorldCom applauds these much-needed initiatives, and has no desire for the Commission to adopt a policy that may inadvertently make this necessary transition any more difficult. Thus, while WorldCom believes that international settlement rates ultimately must reflect true economic cost, and that the Commission possesses the prescriptive authority to establish settlement rate benchmarks based on TSLRIC, the Commission should not establish such rates at this time.<sup>21</sup>

**B. Tariffed Components Are An Important First Step Toward Cost-Based Rates**

While WorldCom would prefer that settlement rate benchmarks reflect a TSLRIC-based cost methodology, WorldCom fully supports the Commission's proposed use of foreign carriers' tariffed components to determine appropriate benchmarks. In turn, those benchmarks

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<sup>19</sup> WorldCom Position Paper on Local Loop Unbundling, January 1997.

<sup>20</sup> WorldCom Position Paper on Local Loop Unbundling at 77-79.

<sup>21</sup> Nonetheless, WorldCom is prepared to provide the Commission with data to support its preliminary findings that TSLRIC for the termination of international calls is about 6 to 9 cents per minute.

should help move settlement rates closer to economic cost.

The tariffed components pricing approach is not the perfect end result from an economic perspective. Indeed, WorldCom believes that, if the Commission has erred at all in this proceeding, it has been in proposing benchmark rates that even the Commission admits are set too high above true economic cost.<sup>22</sup> Rather than trying to mandate massive cuts in settlement rates to drive them immediately to incremental cost, however, WorldCom believes the Commission properly has adopted a reasonable and equitable benchmarks plan based on carriers' tariffed component rates. WorldCom submits that using tariffed components is an important step in the right direction toward cost-based rates.

A significant attribute of the tariffed components approach to setting benchmarks is that it establishes a reasonable and non-discriminatory "proxy" for determining actual underlying costs. Using the tariffed components approach provides an appropriate foundation for benchmarks because it is based on the best available information. It is apparent that the Commission has worked extremely hard to ascertain domestic tariff components. These components are a reasonable surrogate for setting benchmarks because they are the actual rates in effect, as established by the foreign carriers, and reviewed (where applicable) by the foreign regulators.

If a foreign carrier believes that the benchmark rate, based on tariffed components, does not appropriately reflect its economic cost of providing service, it is entitled to an administrative review by the FCC based on data furnished by that carrier. To facilitate

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<sup>22</sup> Notice at paras. 40, 41, 45, 46, 58. For this reason, as WorldCom explains in Section III below, the tariffed components methodology cannot completely remove the incentive for carriers to engage in one-way inbound bypass.

this review process, the Commission must establish a clear-cut procedure, with tight deadlines, to govern its administrative determinations. As part of this procedure, when a foreign carrier seeks review of benchmarks that are applied to it, the burden must be placed on the foreign carrier to demonstrate that it has higher costs, or that the benchmark was calculated incorrectly.<sup>23</sup> The foreign carrier has access to the information necessary to prove its case; thus, the foreign carrier should have the burden of presenting this information, and demonstrating why the benchmark rate is not appropriate. The ability of foreign carriers to seek administrative review of the appropriateness of a benchmark makes the benchmarks approach inherently fair by design, by taking into account all pertinent national cost considerations.

Finally, the Commission seeks comment on whether benchmarks should be calculated on a country-by-country basis, rather than based on averages for groups of countries aggregated by economic status.<sup>24</sup> While WorldCom does not have a strong preference for either approach, the country-by-country approach properly would ensure that the resulting benchmark levels take into account the differing cost factors at play in each of the different foreign markets. WorldCom submits that the country-by-country approach is a reasonable, equitable, and flexible way of establishing benchmarks.<sup>25</sup>

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<sup>23</sup> Notice at para. 57.

<sup>24</sup> Notice at paras. 39-55.

<sup>25</sup> WorldCom suggests several minor modifications to the Commission's proposed tariffed component methodology. First, the international switching facility component must include the cost of multiplexing equipment if a 4:1 multiplication factor is to be assumed in cost calculations. Notice at para. 37 n.47. Second, the national extension tariff component is probably overstated because, as the Commission itself notes, most IMTS calls terminate in international gateway cities. Notice at para. 37 n.51.

**C. A Black Line Transition Schedule Is Critical**

However else the Commission fashions the particulars of its benchmarks approach, it is crucial that the Commission adopt a black line transition schedule.<sup>26</sup> Carriers on all sides need a pathway of certainty leading to cost-based settlement rates. The Commission must reject any proposals that would interfere with this certainty, and otherwise create undue delay and confusion in the world market. WorldCom is confident, however, that in many cases, competition will help bring international settlement rates within benchmark levels well before the end of the transition periods.

The Notice asks a series of questions about the appropriate time periods for the transition. In particular, the Commission queries whether the transition period should be one or two years for high income countries, two years or three years for upper middle and lower middle income countries, and four years or five years for lower income countries.<sup>27</sup>

For high income countries, WorldCom supports a transition period of 18 months from the effective date of the Commission's order in this proceeding. Such a transition period will give carriers from more developed countries considerable lead time to comply with the benchmarks, without unduly delaying the benefits of the benchmarks. In fact, foreign carriers will already have had many months since the Notice was released to ready themselves for a transition, so that 18 additional months certainly should be sufficient time. Moreover, given the growing competition in more developed countries, WorldCom fully expects that most settlement

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<sup>26</sup> Notice at para. 63.

<sup>27</sup> Notice at para. 63.



rates will be within the benchmarks before the 18 month deadline.<sup>28</sup>

For many of the same reasons, WorldCom supports a transition schedule of 2 years for upper middle income countries, 30 months for lower middle income countries, and 3 years for lower income countries. These timelines should give more than adequate time for carriers to move settlement rates within the pertinent benchmark levels.

The Commission queries whether carriers should be asked to make reasonable progress in moving toward the benchmarks during the transition period.<sup>29</sup> WorldCom believes that the Commission should give serious consideration to mandating a "glide path," at least for any country eligible for a transition period of 2 or more years. While WorldCom strongly opposes as counterproductive any waivers, exceptions, or delays in implementing a transition schedule, a mandatory glide path would give all parties greater certainty by demonstrating the progress being made by various carriers toward cost-based rates. Without such an incremental compliance mechanism, there is a significant danger that some foreign administrations may not reduce their settlement rates at all until the applicable deadline -- or even afterwards. A mandatory glide path would prevent such an occurrence.

WorldCom vigorously opposes all the other alternatives posed by the Commission because, if adopted, they would seriously weaken the transition schedule to the detriment of a certain and simple pathway towards cost-based rates. For example, the Commission asks

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<sup>28</sup> For example, the major foreign correspondents in each of the following countries already have implemented, or have proposed to implement this year, settlement rates with the United States that are less than 15.4 cents per minute: Canada, Denmark, France, Germany, Luxembourg, Norway, Sweden, and the United Kingdom.

<sup>29</sup> Notice at para. 64.

whether it should adopt a single deadline, but allow U.S. carriers to request a waiver of this deadline for certain routes.<sup>30</sup> WorldCom opposes this option because (1) no single deadline is appropriate, and (2) it would encourage "whipsawing," as foreign carriers seek to find a U.S. carrier to file an extension request on their behalf. As WorldCom explains above, the key to the success of the Commission's benchmarks approach is a firm deadline, without pre-established exceptions. Establishing a broad waiver procedure will result in substantial delays in achieving lower settlement rates.

Additionally, the Commission seeks comment on whether it should extend the transition period for foreign carriers for which annual reductions in the spread between their current settlement rate and the benchmark rate will exceed a certain percentage, such as twenty-five percent.<sup>31</sup> The same extension is suggested for foreign carriers which would suffer significant declines (greater than a certain percentage) in their annual revenue.<sup>32</sup> WorldCom understands and sympathizes with the Commission's concerns about these countries. Nevertheless, WorldCom opposes these measures because they would actually benefit those foreign carriers that maintain the highest current settlement rates. The Commission must adhere to a black line deadline, and not adopt any exceptions that will all but swallow the rule itself.

The FCC also asks for comment on whether it would be appropriate to permit additional flexibility beyond the transition periods for developing countries that have

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<sup>30</sup> Notice at para. 66.

<sup>31</sup> Notice at para. 67.

<sup>32</sup> Notice at para. 67.

demonstrated an actual commitment to competitive markets.<sup>33</sup> WorldCom opposes this proposal. The proposal itself is inherently contradictory. If a certain route is truly competitive, settlement rates should quickly drop below the maximum of the benchmark; if that same route is not competitive, the benchmark is still needed.

WorldCom reiterates that the best way to achieve lower settlement rates is to implement fair benchmark levels, and then require compliance over a reasonable but certain period of time. With a sufficient transition period, no other exceptions are necessary. Otherwise, the Commission will only be inviting endless rounds of administrative litigation. The Commission should not adopt any exceptions to the transition schedule.

#### **D. Enforcement**

The Commission must ensure timely and effective enforcement, regardless of the final form of its benchmark rules. In particular, the Commission must be willing to act quickly and decisively in response to complaints filed by US. carriers demonstrating that foreign administrations have not complied with the settlement rate benchmarks. As in the case of the transition schedule itself, the Commission should adopt a black line, date certain procedure, with a streamlined pleading cycle. Upon the filing of a complaint, the FCC should issue an order on the merits promptly, but in no event later than three months after filing of the complaint. The Commission's order must become effective as of the transition deadline.

Where the foreign carrier still has not reduced its settlement rates to the benchmark level by the applicable deadline, WorldCom supports the Commission's proposal that

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<sup>33</sup> Notice at para. 70.

U.S. carriers be directed to pay a settlement rate no higher than the benchmark.<sup>34</sup> This procedure has already been used by the Commission to remedy discriminatory settlement rates imposed by the foreign administrations in Peru and Bolivia.<sup>35</sup> In contrast, the Commission's other proposals -- such as agreements to a "reasonable schedule of reductions" and FCC determinations of "adequate progress" -- are too amorphous and unwieldy, and would only result in undue delay and unnecessary administrative proceedings.<sup>36</sup> In particular, WorldCom opposes the Commission's proposal to require U.S. carriers to negotiate settlement rate agreements that provide for a fixed expiration date until a foreign carrier agrees to a reasonable schedule of reductions.<sup>37</sup> WorldCom has long opposed fixed expiration dates because it has significant concern that certain foreign administrations would be unwilling to renew such operating agreements with all but the one or two largest U.S. carriers.

### **III. BENCHMARKS WILL ALLEVIATE THE POTENTIAL INCENTIVE FOR ONE-WAY SETTLEMENT RATE BYPASS**

In addition to supporting the use of benchmarks to achieve lower, cost-based international settlement rates, WorldCom also supports the benchmarks approach as a major step

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<sup>34</sup> Notice at para. 89.

<sup>35</sup> See, e.g., In the Matter of AT&T Corp., MCI Telecommunications Corp., Sprint, and LDDS WorldCom Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Peru, Order and Authorization, DA 96-696 (released May 7, 1996); In the Matter of AT&T Corp. and MCI Telecommunications Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Bolivia, Order and Authorization, DA 96-714 (released May 7, 1996).

<sup>36</sup> Notice at para. 89.

<sup>37</sup> Notice at para. 89.

toward alleviating potential competitive distortions -- in particular the incentive for carriers to engage in one-way settlement rate bypass. Although the benchmark approach proposed by the Commission certainly is not a perfect economic solution because the proposed benchmarks are still well above economic cost, the benchmark approach deserves support because it attacks the crux of the problem: above-cost settlement rates. WorldCom applauds the Commission's hard work in crafting a proposed test that addresses the concerns of U.S. carriers while taking into account foreign carriers' understandable desire and need for certainty.

**A. International Facilities-Based Service**

The Commission proposes to apply its benchmark approach when a carrier, whether U.S. or foreign-owned, seeks authorization to provide international facilities-based switched voice or private line service between the United States and an "affiliated" foreign market.<sup>38</sup> In particular, the Commission proposes to condition any such authorization on the foreign affiliate offering U.S. licensed international carriers a non-discriminatory settlement rate within the benchmark range.<sup>39</sup> WorldCom supports the Commission's proposal because it is a narrowly-tailored remedy that addresses potential competitive distortions without limiting the ability of foreign carriers to enter the U.S. market. WorldCom has never opposed an application by a foreign carrier to enter the U.S. market.

In addition to applying benchmark safeguards to facilities-based service on affiliated routes, it is vitally important that the Commission continue to vigorously enforce the

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<sup>38</sup> Notice at paras. 76, 79.

<sup>39</sup> Notice at para. 76.

non-discrimination and proportionate return requirements of the International Settlements Policy ("ISP") on all routes.<sup>40</sup> The ISP has been invaluable in achieving non-discriminatory rates, and it remains invaluable today, particularly with regard to markets that lack effective competition.

WorldCom also supports the FCC's proposal to order a reduction in the settlement rate to the low end of the benchmark in the event that the Commission determines that a carrier has caused competitive distortions.<sup>41</sup> WorldCom encourages the Commission to define, in advance, as precisely as possible, what constitutes a "competitive distortion," and then to act quickly to determine whether such a distortion has occurred in any particular instance.<sup>42</sup> WorldCom believes that, at a minimum, a clear trigger mechanism must be established that does not put the burden on U.S. carriers to prove that such a distortion has occurred.

The Commission asks whether these settlement rate safeguards are really necessary, and especially whether a foreign carrier has the incentive or ability to use above-cost settlement rates to cross-subsidize a U.S. affiliate.<sup>43</sup> The Commission's focus on this so-called "outbound bypass" problem misses the crucial point. The settlement rate safeguards, as applied to facilities-based service by carriers, whether U.S. or foreign-owned, between the U.S. and "affiliated" foreign markets, are designed first and foremost to reduce the incentive for inbound bypass.<sup>44</sup> The safeguards are specifically designed to reduce the incentive for carriers to route

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<sup>40</sup> Notice at para. 90.

<sup>41</sup> Notice at para. 76.

<sup>42</sup> Notice at para. 77.

<sup>43</sup> Notice at para. 80.

<sup>44</sup> See Notice at paras. 11, 75.

inbound U.S. traffic from "affiliated" markets on a full-circuit basis, thereby avoiding the high settlement rate on that route. Consequently, the proposed settlement rate safeguards are absolutely necessary to alleviate the incentive for one-way, inbound bypass. Because the benchmark levels proposed by the Commission are still well above actual economic cost,<sup>45</sup> application of the benchmarks will decrease -- but not eliminate -- the incentive for carriers to engage in bypass, absent true cost-based rates. As a result, some competitive distortion (i.e., inbound bypass) likely will occur. Nonetheless, WorldCom believes that the adoption of benchmarks will lead to significantly lower settlement rates, and thus, will help to prevent substantial market distortion that might otherwise occur as a result of inbound bypass.

#### **B. International Simple Resale**

WorldCom agrees with the FCC's view that ISR presents a significant danger of competitive distortion.<sup>46</sup> The Notice itself describes the inbound bypass problem, and proposes to impose settlement rate conditions on authorizations to resell international private line services to provide switched services.<sup>47</sup> WorldCom strongly supports this proposed approach.

At the outset, WorldCom emphasizes that the Commission has long been concerned with the potential for ISR to create competitive distortion in the IMTS market. The Commission has, in effect, considered ISR to be an exception to its ISP policy, and has only granted "waivers" of its ISP policy to authorize ISR in limited circumstances after extensive

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<sup>45</sup> Notice at paras. 40, 45, 46, 58.

<sup>46</sup> Notice at para. 81.

<sup>47</sup> Notice at paras. 81-83.

inquiry. Further, the Commission has applied its ISR restrictions to all carriers, whether U.S. or foreign-owned.<sup>48</sup>

### 1. WorldCom's Proposed Test For Providing ISR

WorldCom supports the FCC's proposal to allow ISR on any route where the settlement rate on that route is within the benchmark.<sup>49</sup> However, WorldCom proposes a variation on this basic concept that would allow the provision of ISR on some routes even where the prevailing settlement rates are not within the benchmark. Under WorldCom's proposed three-prong test, ISR could be provided on a route if any one test of the independent three-part test is satisfied:

- (1) Where ISR is already authorized on the route as of the effective date of the order in this proceeding; or
- (2) Where the settlement rate for more than 50% of outbound traffic on a particular route is within the benchmark; or
- (3) Where the Commission determines that the foreign market offers equivalent opportunities for ISR.

The first prong speaks for itself. The Commission should grandfather those routes on which ISR has been authorized as of the effective date of the order in this proceeding. Thus, ISR would continue to be permitted between the U.S. and, at a minimum, the following countries: the United Kingdom, Canada, Sweden, and New Zealand.

The second prong is simply a clarification of the Commission's proposal. The FCC has proposed that ISR would not be authorized until the prevailing settlement rate on a

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<sup>48</sup> In fact, the first authorization to provide ISR was issued to fONOROLA, a Canadian-owned carrier. See fONOROLA/EMI Order, 7 FCC Rcd 7312 (1992).

<sup>49</sup> Notice at para. 82.



route is within the benchmark. WorldCom believes, however, that the presence of multiple foreign correspondents on a route could result in confusion as to whether ISR should be authorized if some settlement rates on any given route are within the benchmark, while others are outside the benchmark. In order to establish a clear rule in such cases, WorldCom suggests that if more than 50 percent of outbound traffic from the U.S. is being settled within the benchmark, ISR should be authorized on the route.

The third prong of WorldCom's proposal would allow ISR on a route even if the prevailing settlement rate is above the applicable benchmark. WorldCom believes that there could be situations where, even though the prevailing settlement rate on a route is not within the benchmark, the country offers equivalent opportunities for U.S. carriers to engage in ISR. In fact, this is the case for New Zealand, where the Commission has already authorized ISR.<sup>50</sup> In those instances, the option of routing traffic via ISR would put additional pressure on high accounting rates by encouraging U.S. and start-up foreign carriers to enter the foreign market and terminate traffic at lower rates. Indeed, this scenario comports well with the Commission's own observation that concerns about anticompetitive behavior are "significantly diminished" if a foreign carrier's "ability to collect above-cost settlement rates is constrained by the existence of effective competition in its home market."<sup>51</sup> As proposed by WorldCom, the "equivalency" test would not be an entry barrier, but simply an alternative means of determining when ISR on a route should be authorized.

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<sup>50</sup> At the time the Commission authorized ISR between the U.S. and the United Kingdom, and between the U.S. and Sweden, the settlement rate on these routes was also above the proposed benchmark.

<sup>51</sup> See Notice at para. 75.